IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7281 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRUTHVIRAJ RAHUBHA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR BJ JADEJA for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MR CHHAYA, AGP for Respondent(s) : 1 – 2.

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 10/01/2007

ORAL JUDGMENT

1. The short facts of the case are that one Rahubha Jivubhai was holding the agricultural land of Village Parabdi in Dhandhuka Taluka. After the enactment of Gujarat Agricultural Land Ceiling Act (hereinafter referred to as “the Act”) and more particularly after amendment of the Act, the case was registered by the Mamlatdar as Ceiling Case No.15 of 1976, the matter was processed and it was declared that there is surplus land of 37 acres and 10 gunthas. The matter was carried before the higher forum mainly on the ground that the proceedings were against the dead person. Ultimately, this Court, as per the judgement dated 1.12.1993 in SCA No.5454 of 1990 remanded the matter since the legal representatives of the deceased were not heard. Thereafter, the Mamlatdar and ALT, after remand, passed a fresh order on 15.2.1995 and held that the deceased Rahubha Jivubhai was holding the surplus land admeasuring 71 acres and 35 gunthas, as per the order dated 15.2.1995. The petitioners carried the matter before the Dy. Collector in Appeal No.1 of 1995,

which came to be dismissed on 23.6.1995. The petitioners also preferred revision before the Gujarat Revenue Tribunal being Revision Application No.B.A.466/1995, which came to be dismissed on 30.7.1996 and it is under these circumstances, the petitioners have approached this Court by the present petition.

2. I have heard Mr.H.M.Jadeja for Mr.B.J.Jadeja, learned Counsel for the petitioners and Mr.Chhaya, learned AGP for the State Authorities.

3. Mr.Jadeja, learned Counsel appearing for the petitioners raised the first contention that the opportunity has not been given to legal heirs of the deceased Rahubha Jivubhai and in his submission, Yashvant Rahubha was one of the legal representatives of deceased Rahubha, who was required to be served notice and as no notice was given, not only the mandatory procedure was not followed, but the direction given by this Court in its judgement dated 1.12.1993 in SCA No.5454 of 1993 are not complied with and, therefore, the order

deserves to be quashed on that ground.

4. The contention prima facie, appears to be attractive, however, on a close scrutiny, it appears that there is a conscious acquiescence on the part of even Yashvant Rahubha in not participating in the proceedings before the Mamlatdar. The aforesaid is apparent, because it is at the instance of the petitioners, including Yashvant Rahubha, the order came to be passed by this Court on 10.12.1993 in SCA No.5454 of 1990, wherein the direction was given by this Court for a fresh decision according to law after giving opportunity to all legal heirs and legal representatives of the deceased. The Tribunal has recorded that the notice was issued to all, which was to be served to the head of the family namely; Pruthviraj Sinh Rahubha, who initially did not accept the notice, but subsequently he had appeared and his deposition was also recorded. Therefore, Yashvant Rahubha cannot be heard to say that she had no knowledge of the proceedings before the Mamlatdar, more particularly when the remand order was passed at

her instance together with the other petitioners. At no point of time, Yashvant Rahubha had appeared before the Mamlatdar for participation in the proceedings. Further, it deserves to be recorded that the present petition is not preferred only by Yashvant Rahubha only complaining the breach of principles of natural justice, but Yashvant Rahubha is one of the petitioners together with Pruthviraj Rahubha, who appeared and participated in the proceedings. If a party to the proceedings has consciously not participated, subsequently cannot be heard to say that she had no notice for the proceedings before the Mamlatdar. If such contention is entertained, it may result into allowing the party to take undue benefit of her own wrong. Further, the Tribunal in the impugned order, while dealing with the said contention has observed that the deposition of Pruthviraj Sinh Rahubha speaks for the deposition on behalf of all the legal heirs of the deceased Rahubha and the advocate was also engaged by Pruthviraj Sinh

and at no point of time objection was raised that the other legal heirs of the deceased Rahubha are not issued notice and, therefore, the Tribunal has observed that in view of the fact that Pruthviraj Sinh being the eldest son of deceased Rahubha, who participated on behalf of all legal heirs of deceased Rahubha, the order cannot be said as defective. Under these circumstances, since Pruthviraj has already represented on behalf of the legal heirs of deceased Rahubha and as Yashvant Rahubha has acquiesced for the proceedings, which were pursued through Pruthviraj on behalf of all legal heirs of the deceased Rahubha, it cannot be said that the order passed by the Mamlatdar and ALT is in breach of principles of natural justice and, therefore, the said contention raised by Mr.Jadeja cannot be accepted.

5. Mr.Jadeja, learned Counsel appearing for the petitioner raised the second contention that the strength of the family is not properly considered inasmuch as Yashvant Rahubha had married not on 10.2.1976, but on 8.5.1980 and,

therefore, if Yashvant is added in the family, one unit equivalent to 1/5th would be additionally available, which has not been granted by the lower authority and, therefore, the orders passed by the lower authorities are illegal.

6. It deserves to be recorded that as such the said aspect is in the arena of appreciation of facts. The Mamlatdar has, in the impugned order, recorded that initially in the deposition of Pruthviraj Sinh it was declared that the marriage of Yashvant Rahubha was on 10.2.1976 and the invitation card was also produced. Thereafter, in the second deposition, he has stated that the marriage was performed on 8.5.1980. The Mamlatdar has recorded that there is no evidence produced on record for cancellation of the earlier marriage fixed on 10.2.1976 and, therefore, has not accepted the subsequent different statement of Pruthviraj Sinh and under these circumstances, after appreciation of evidence, he has proceeded on the basis that Yashvant Rahubha had already

married on 10.2.1976 and, therefore, the family comprised of only six persons and not of seven persons, including Yashvant Rahubha. The aforesaid appreciation of the deposition and the facts is reappreciated by the higher authorities and the Tribunal in the impugned order has observed that the subsequent statement cannot be accepted. Therefore, if all the lower authorities upon the appreciation and reappreciation of the facts, have found that Yashvant Rahubha had already married on 10.2.1976 and, therefore, outside the definition of the family, this Court, while exercising power under Article 227 of the Constitution of India, would not upset the finding of facts, more particularly in absence of any cogent and reliable evidence produced on record for demonstrating for such finding of facts is perverse to the record. Therefore, the contention of Mr.Jadeja cannot be accepted.

7. Mr.Jadeja, learned Counsel appearing for the petitioners, lastly contended that the land held by deceased Rahubha was an ancestral land and

there was share of Mr.Ranjitsinh and, therefore, it could not have been treated as the land held by Rahubha only.

8. The said aspect was considered by the Mamlatdar and it was negatived on the ground that the land was treated as of Rahubha only with the circumstances that a portion of the land was sold by Rahubha to Rasik Parshotam as if it was own property. The said aspect is also appreciated by the lower authority, including the Tribunal and it is found that there was no share of Ranjit Sinh in the property held by Rahubha since it was not proved by any documentary evidence. Such aspect would also fall in the arena of appreciation and reappreciation of the evidence. If the lower authorities have relied upon the revenue records and have not believed the deposition of Ranjit Sinh, it cannot be said that the finding of facts is perverse to the record. Therefore, the said contention of Mr.Jadeja cannot be accepted.

9. In view of the above and the perusal of the order passed by the Tribunal, it cannot be said

that any jurisdictional is committed by the Tribunal while exercising the power, nor can it be said that the discretion exercised by the Tribunal is perverse, which may deserve to be upset in exercise of the power under Article 227 of the Constitution of India.

10. In the result, the petition fails. Hence, the same is dismissed. Rule discharged. Interim relief, if any, stands vacated. There shall be no order as to costs.

10.1.2007 **(Jayant Patel, J.)**

vinod